

October 26, 2016

Mr. Christopher Radtke
8221 Peach Orchard Road
Dundalk, Maryland 21222

Re: Radtke Property, Christopher
8221 Peach Orchard Road
Critical Area Administrative Variance
EPS Tracking Number: 07-16-2282

Dear Mr. Radtke:

In accordance with Section 33-2-205 of the Baltimore County Code (Code), the Department of Environmental Protection and Sustainability (EPS) received a Chesapeake Bay Critical Area (CBCA) Administrative Variance request on May 6, 2016, to construct an irregularly shaped, approximately 1,700 square foot (sf) concrete patio within the 100-foot Critical Area Buffer. An application was made on May 9, 2016, for a building permit to construct the patio. On May 17, 2016 and on July 20, 2016, EPS staff conducted a site inspection of the property, when it was observed that the patio had already been constructed. The illegal construction of an approximately 1,700 sf concrete patio within the buffer, built to within nine feet of mean high water (MHW), constitutes a violation of Sections 33-2-401 and 33-2-402 of the Code.

The subject waterfront property, located on Peach Orchard Cove in the Dundalk section of Baltimore County, consists of two lots. One lot is located within a Resource Conservation Area (RCA) of the CBCA, and extends landward of MHW approximately 200 linear feet and is not located within a Modified Buffer Area (MBA). This waterfront lot, and similar lots to the east, were once owned by Baltimore County and were part of Peach Orchard Park. They are connected to the northeast by Watersedge Park and what remains of Peach Orchard Park. Prior to construction of the approximately 1,700 sf patio, this area, comprising 13,045 sf, was in an undisturbed condition, with the exception of lawn mowing. The other lot (6,050 sf), adjoining the RCA lot, is located within an Intensely Developed Area (IDA), and extends approximately 100 feet north of the larger lot, to Peach Orchard Road. The IDA lot contains a single family dwelling, shed,

walkways, and other residential features. The property is bounded to the east and west by properties of similar sizes, each containing two lots with the same Critical Area land use designations. The property is bounded to the north and south by Peach Orchard Road and Peach Orchard Creek, respectively.

The Director of EPS may grant a variance from the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Per Section 33-2-401 of the Code, a minimum buffer shall be established and remain undisturbed. Since alternative locations for the patio are clearly available on the property outside of the buffer, an alternative location could have been approved, if all other RCA requirements were met, without the need for a variance, and which would have avoided all Critical Area buffer impacts. There are no special conditions that are peculiar to the land or structure and literal enforcement of the regulations would not constitute an unwarranted hardship. The applicant would not be denied reasonable use of the property. The applicant has reasonable use, as it is developed with a dwelling, shed, pond, driveway, pier, and other residential uses. Therefore, the first criterion has not been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. The applicant has not demonstrated that the patio within the buffer is a right commonly enjoyed by other properties in similar areas. Any new projects proposed within the 100-foot Critical Area Buffer would not be approved without a Critical Area variance unless it is a water-dependent facility, is to be utilized as access to a pier or the water, or is located within a MBA. Since the project is already built, if it were to be approved by this variance request, it would deprive other applicants of rights enjoyed by the applicant of this variance because proposed buffer impacts would not be approved on other properties in similar areas with similar circumstances where feasible alternatives exist outside of the 100-foot Critical Area buffer to avoid buffer impacts. Literal enforcement of the regulations would not deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area, therefore, the second criterion has not been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The location of the construction of a 1,700 sf patio, approximately nine feet

from the water's edge within the Critical Area buffer on a similar property and under similar circumstances would be denied. If this request was to be approved, it would confer upon the applicant a special privilege, therefore, the third criterion has not been met. In this particular case, reasonable accommodation can be provided by allowing the construction of a patio, with an approved building permit, beyond the 100-foot buffer without any buffer impacts, while also allowing a walkway through the buffer for access to the pier.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance is, in fact, based upon conditions and circumstances that are the direct result of actions taken by the applicant, as the 1,700 sf patio is already built, therefore, the fourth criterion has not been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The 1,700 sf patio was constructed within the 100-foot Critical Area Buffer, an area that shall remain undisturbed, without an approved Critical Area Variance or an approved building permit. Alternatives exist outside of the buffer that avoid all buffer impacts. Allowing extensive impervious surfaces so close to the water's edge would result in adverse water quality impacts by greatly decreasing pervious buffer areas that provide for water quality treatment by infiltration and plant use, therefore, adverse effects to water quality, and impacts to fish, wildlife, or plant habitat could result. Granting of this variance would not be in harmony with the general spirit and intent of the Critical Area Law. The fifth criterion is not met.

Based upon our review, it is this Department's findings that all of the above criteria have not been met, and the requested variance is hereby denied in accordance with Section 33-2-205 of the Baltimore County Code.

If you do not concur with the above decision, you may file an appeal with the Baltimore County Board of Appeals within thirty (30) calendar days of the date of this letter. The appeal must be in writing and state concisely why you believe the decision was improper. Address the appeal to the Baltimore County Board of Appeals and send it to the address listed on the following page, accompanied by a \$100.00 check payable to Baltimore County Government to cover the appeal fee.

Mr. Christopher Radtke
Critical Area Administrative Variance
DEPS Tracking #07-16-2282
October 26, 2016
Page 4

Environmental Impact Review
Baltimore County Department of
Environmental Protection and Sustainability
111 West Chesapeake Avenue, Room 319
Towson, Maryland 21204
Attention: Ms. Patricia M. Farr

If you have questions regarding this project, please contact Mr. Thomas Panzarella at 410-887-3980.

Sincerely,

Vincent J. Gardina
Director

VJG:tcp

c: Ms. Claudia Jones, Critical Area Commission